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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

THE STATE OF NEVADA BY ITS ATTORNEY  
GENERAL ADAM PAUL LAXALT

Plaintiff,

v.

CERBERUS INSTITUTIONAL PARTNERS V,  
L.P., a limited partnership; AB ACQUISITION  
LLC, a limited liability company; and SAFEWAY  
INC., a corporation.

Defendants.

Case No.: 2:15-cv-00176-JAD-NJK

**STIPULATED JUDGMENT**

WHEREAS, Plaintiff State of Nevada, through its Attorney General, (“Plaintiff”) having initiated an investigation of the proposed acquisition by Defendants AB Acquisition LLC (“Albertsons”) and Cerberus Institutional Partners V, L.P. (“Cerberus”), of Defendant Safeway Inc. (“Safeway”), filed a Complaint alleging violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and the Nevada Unfair Trade Practices Act, Nev. Rev. Stat. 598A et seq.; and

WHEREAS, Defendants agree that this Court has jurisdiction over them and the subject matter in this action; and

WHEREAS, Defendants agree to be bound by the provisions of this Judgment pending its approval by the Court and thereafter; and

WHEREAS, Defendants have agreed with the Federal Trade Commission to an

1 Agreement Containing Consent Order, including a Complaint, an Order to Maintain Assets (the  
 2 “OMA”) and a Decision and Order (the “FTC Order”) in a Related Action (defined herein),  
 3 which have all been provisionally accepted by the Federal Trade Commission. The OMA and  
 4 FTC Order are incorporated into this Judgment and attached as Exhibits A and B hereto to  
 5 address the allegations set forth by Plaintiff in its Complaint;

6 NOW THEREFORE, before any testimony is taken, without trial or adjudication of any  
 7 issue of fact or law, without any admission or finding of wrongdoing or violation of any law, and  
 8 upon consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED:

### 9 I. JURISDICTION

- 10 1. Defendant Cerberus Institutional Partners V, L.P. is a limited partnership organized,  
 11 existing, and doing business under and by virtue of the laws of the State of Delaware,  
 12 with its headquarters and principal place of business located at 875 Third Avenue, 11<sup>th</sup>  
 13 Floor, New York, NY 10022.
- 14 2. Defendant AB Acquisition LLC is a company organized, existing, and doing business  
 15 under and by virtue of the laws of the State of Delaware, with its headquarters and  
 16 principal place of business located at 250 Parkcenter Boulevard, Boise, Idaho 83706.
- 17 3. Defendant Safeway Inc. is a corporation organized, existing, and doing business under  
 18 and by virtue of the laws of the State of Delaware, with its headquarters and principal  
 19 place of business located at 5918 Stoneridge Mall Rd., Pleasanton, CA 94588.
- 20 4. This Court has jurisdiction over the subject matter of, and each of the Parties to, this  
 21 action. The Complaint states a claim upon which relief may be granted against  
 22 Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18, and under Nev. Rev.  
 23 Stat. § 598A.060(1)(e)-(f), alleged in the Complaint as pendent state claims.

### 24 II. DEFINITIONS

25 IT IS ORDERED that, as used in this Judgment, all defined terms used herein shall have  
 26 the meaning defined in the FTC Order. In addition, the following definitions shall apply:

- 27 A. “Defendants” means Cerberus, Albertsons, and Safeway, individually and collectively.

1 B. "Nevada Assets To Be Divested" means the Supermarkets in Nevada identified on Schedule  
2 C of the FTC Order, or any portion thereof, and all rights, title, and interest in and to all  
3 assets, tangible and intangible, relating to, used in, and/or reserved for use in, the  
4 Supermarket business operated at each of those locations, including but not limited to all  
5 properties, leases, leasehold interests, equipment and fixtures, books and records,  
6 government approvals and permits (to the extent transferable), telephone and fax numbers,  
7 and goodwill. Nevada Assets To Be Divested includes any of Defendants' other businesses  
8 or assets associated with, or operated in conjunction with, the Nevada Supermarket locations  
9 listed on Schedule C of the FTC Order, including any fuel centers (including any  
10 convenience store and/or car wash associated with such fuel center), pharmacies, liquor  
11 stores, beverage centers, gaming or slot machine parlors, store cafes, or other related  
12 business(es) that customers reasonably associate with the Supermarket business operated at  
13 each such location. At the Acquirer's option, the Nevada Assets To Be Divested shall also  
14 include any or all inventory as of the Divestiture Date.

15 *Provided, however,* that the Nevada Assets To Be Divested shall not include those assets  
16 consisting of or pertaining to any of the Defendants' trademarks, trade dress, service  
17 marks, or trade names, *except* with respect to any purchased inventory (including private  
18 label inventory) or as may be allowed pursuant to any Remedial Agreement(s); and

19 *Provided, further,* that in cases in which books or records included in the Nevada Assets  
20 To Be Divested contain information (a) that relates both to the Nevada Assets To Be  
21 Divested and to other retained businesses of Defendants or (b) such that Defendants have  
22 a legal obligation to retain the original copies, then Defendants shall be required to  
23 provide only copies or relevant excerpts of the materials containing such information. In  
24 instances where such copies are provided to an Acquirer, the Defendants shall provide to  
25 such Acquirer access to original materials under circumstances where copies of materials  
26 are insufficient for regulatory or evidentiary purposes.

27 C. "Commission" means the Federal Trade Commission.  
28

1 D. “Related Action” means the Commission’s investigation of Defendants involving the merger  
2 of Defendants, resulting in the consolidation of retail Supermarket stores in Clark County,  
3 Nevada and other areas, and its subsequent action, *In the Matter of Cerberus Institutional*  
4 *Partners V, L.P.; AB Acquisition LLC; and Safeway Inc.*.

5 E. “Nevada Relevant Area” means Clark County, Nevada.

6 **III. ASSET MAINTENANCE AND DIVESTITURE RELIEF**

7 **IT IS HEREBY ORDERED**, that:

8 A. Defendants shall comply with the OMA and with the FTC Order.

9 B. All Remedial Agreements shall be deemed incorporated by reference into this Judgment and  
10 Defendants shall comply with all such Remedial Agreements.

11 C. Defendants waive any objection to reports to the Commission by the Monitor as required by  
12 Paragraph III of the OMA or Paragraph IV of the FTC Order, or by the Divestiture Trustee as  
13 required by Paragraph III of the FTC Order, to the extent such reports relate to the Nevada  
14 Assets to be Divested or the Nevada Relevant Area, also being provided to Plaintiff at the  
15 same time they are provided to the Commission. Defendants further waive any objection to  
16 the Monitor consulting with or disclosing any relevant information to Plaintiff so long as  
17 Plaintiff agrees to maintain the confidentiality of such information to the fullest extent  
18 possible. In the event of a disagreement or dispute between Defendants and the Monitor that  
19 cannot be resolved, Defendants must agree to permit the Monitor to seek the assistance of the  
20 Antitrust Unit in the Office of the Nevada Attorney General’s Bureau of Consumer Protection  
21 to resolve the issue.

22 D. For the duration of this Judgment, Defendants shall not terminate or rescind the Hart-Scott-  
23 Rodino Limited Confidentiality Waiver and Confidentiality Agreement between Defendants  
24 and Plaintiff dated June 6, 2014 without the consent of Plaintiff.

25 **IV. OTHER RELIEF**

26 **IT IS FURTHER ORDERED**, that:  
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- 1 A. Any advance written notification to the Commission required by Paragraph VIII of the FTC  
2 Order, to the extent such notification relates to the Nevada Assets To Be Divested or the  
3 Nevada Relevant Area, shall also be provided to Plaintiff.
- 4 B. Said notification under this Paragraph shall be provided in writing, and shall include a brief  
5 description of the transaction, the parties to the transaction, the anticipated closing date,  
6 specificity of location within the Nevada Relevant Area, and the contact person for follow-up  
7 information requests. Notification shall be sent via overnight express delivery to the  
8 following address: State of Nevada, Office of Nevada Attorney General; Bureau of Consumer  
9 Protection; Attention: Antitrust Unit; 10791 W. Twain Ave., Suite 100, Las Vegas, Nevada  
10 89135. Defendants shall provide the notification to Plaintiff at least thirty (30) days prior to  
11 consummating any such transaction. To comply with this Paragraph, Defendants shall  
12 provide to Plaintiff the same notification on the same day that Defendant provides such  
13 notice(s) to the Commission pursuant to Paragraph VIII of the FTC Order.
- 14 C. Plaintiff may request further information from Defendants of a transaction reported under  
15 Paragraph IV(A), subject to claims of privilege or other rights Defendants may have in  
16 response to such requests. Such requests shall be made by Investigative Demands issued  
17 pursuant to the authority of this Judgment and Nev. Rev. Stat. § 598A.100. Nothing in this  
18 Paragraph IV shall waive, limit or compromise Plaintiff's authority and ability to pursue a  
19 subsequent enforcement action against Defendants for a transaction that may violate state or  
20 federal law.
- 21 D. Plaintiff is awarded its attorneys' fees and investigative costs in the amount of Ninety  
22 Thousand Dollars (\$90,000). Defendants shall pay this sum to the Plaintiff within thirty (30)  
23 days of entry of this Judgment or March 1, 2015, whichever is later.

## 24 V. COMPLIANCE AND MONITORING

25 **IT IS FURTHER ORDERED**, that:

- 26 A. Defendants shall submit to Plaintiff copies of all verified written reports required to be  
27 submitted to the Commission by Paragraph IX of the FTC Order, which copies shall be  
28 provided to the Plaintiff on the same day that Defendants provide their reports to the

Commission. When Defendants provide to Plaintiff a copy of a verified written report submitted to the Commission, Defendants must state in such report that the report is responsive to and enforceable under the corresponding provisions of this Judgment.

B. If requested by Plaintiff, Defendants shall provide the name(s) of Defendants' employee(s) who provided and/or are responsible for providing information used and reviewed in support of the statements contained in the written report of compliance.

## **VI. NOTICE AND NOTICE EVENTS**

**IT IS FURTHER ORDERED**, that:

A. Any notice provided by Defendants to the Commission pursuant to Paragraph X of the FTC Order shall also be provided to the Plaintiff on the same day such notice is provided to the Commission.

B. Any notices required by this Judgment shall be delivered to the parties at the following addresses:

For Albertsons:

AB Acquisition, LLC  
250 Parkcenter Blvd.  
Boise, ID 83706  
Attention: General Counsel

with a copy to:

Dechert LLP  
1900 K Street NW  
Washington, DC 20006  
Attention: Paul T. Denis  
James A. Fishkin

For Cerberus:

Cerberus Capital Management  
875 Third Avenue  
11<sup>th</sup> Floor  
New York, NY 10022  
Attention: General Counsel

with a copy to:

Dechert LLP  
1900 K Street NW  
Washington, DC 20006  
Attention: Paul T. Denis

James A. Fishkin

For Safeway:

Safeway Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588  
Attention: General Counsel

with a copy to:

Law Offices of Richard C. Weisberg  
33 Derwen Road  
Bala Cynwyd, PA 19004  
Attention: Richard C. Weisberg

For Plaintiff, to the same address listed in Paragraph IV(B).

Any party may change the name or address of the person to receive notice by providing prior written notice to the other parties.

**VII. PLAINTIFF'S RIGHTS OF  
INVESTIGATION, INSPECTION AND EXAMINATION**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Judgment:

A. Plaintiff may issue an Investigative Demand pursuant to Nev. Rev. Stat. § 598A.100.

Defendants shall timely and fully comply with any such Investigative Demands; and

B. Subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Defendants, Defendants shall permit any duly authorized representative of Plaintiff

1. Access, during office hours of Defendants and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Defendants relating to compliance with this Judgment, which copying services shall be provided by such Defendant at the request of the authorized representative(s) of Plaintiff and at the expense of Defendant; and

- 1           2. Without restraint or interference from Defendants, access to interview officers,  
2           directors, or employees of Defendants, who may have counsel present, regarding  
3           any such matters.

4           **VIII. VIOLATIONS AND ENFORCEMENT OF JUDGMENT**

5           **IT IS FURTHER ORDERED**, that:

- 6           A. It shall be a violation of this Judgment if a Defendant fails to abide by the terms of this  
7           Judgment or, to the extent they relate to the Nevada Assets To Be Divested or the Nevada  
8           Relevant Area, the FTC Order, OMA, and/or any Remedial Agreements.
- 9           B. Subject to the requirements of this Section, Plaintiff may petition the Court for relief as a  
10          result of a violation of this Judgment by filing a “Notice of Violation of Judgment” which  
11          shall set forth the alleged violation and the relief sought by Plaintiff.
- 12          C. For any violations of this Judgment committed by Defendant(s), Plaintiff may seek the  
13          following remedies:
- 14                  1. Payment of penalties in accordance with Nev. Rev. Stat. § 598A.170;
- 15                  2. A civil contempt of court order from the Court retaining jurisdiction over the  
16                  interpretation, modification and enforcement of this Judgment, and all remedies  
17                  provided by law for obtaining such order; and
- 18                  3. Equitable and injunctive relief, with respect to the Nevada Assets To Be Divested,  
19                  authorized by federal or state law that the Court deems appropriate, so long as such  
20                  relief is not inconsistent with the FTC Order.
- 21          D. All relief requested by Plaintiff for violation of the provisions of this Judgment shall be  
22          supported by evidence presented to the Court in whatever form required by the Court,  
23          applying substantive Nevada law in interpretation and enforcement.
- 24          E. All monetary penalties paid pursuant to this Section shall be deposited in compliance with  
25          Nev. Rev. Stat. § 598A.260. Defendant(s) shall also pay to Plaintiff its reasonable  
26          attorneys’ fees and costs incurred if Plaintiff is the prevailing party in a contested action to  
27          interpret, modify or enforce this Judgment. `
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F. Plaintiff shall not take enforcement action under this Judgment until the following has occurred:

1. Plaintiff has given a Defendant notice of the alleged violation(s) in writing;
2. Defendant has had a period of at least thirty (30) days to (a) respond to and cure the alleged violation(s); and/or (b) provide written notice disputing the alleged violation or presenting cure to Plaintiff; and
3. The respective Parties have had a period of ten (10) days after Defendant has provided notice of dispute or notice of cure to meet and confer regarding the alleged violation(s) and the respective Parties' responses. Such meeting and conferral may occur in person, by telephone, or in writing.

G. If Defendant fails to respond to and cure, or fail to provide written notice of dispute, Plaintiff may immediately seek relief from the Court. The respective parties may, but no party is required to, extend the timelines in this Paragraph by mutual consent in writing. Plaintiff may informally notify Defendant of receipt of information alleging a violation of this Judgment if, in Plaintiff's judgment, such notification could likely result in a prompt resolution of the alleged violation.

## **IX. CHANGES TO AND DIRECTIVES RESULTING FROM COMMISSION'S DECISION AND ORDER**

**IT IS FURTHER ORDERED**, that from the date of entry of this Judgment, if the Commission makes any changes to the FTC Order or OMA or issues further directives pursuant to the FTC Order or OMA, and unless otherwise stipulated by the parties to this Judgment, such changes and further directives are incorporated into this Judgment.

## **X. GENERAL PROVISIONS**

**IT IS FURTHER ORDERED**, that:

- A. The remedies in this Judgment are in addition to all remedies available to Plaintiff under federal and state law. Nothing in this Judgment shall prohibit or in any way limit Plaintiff from seeking all damages, fines, penalties and remedies for any Defendant's conduct, actions, transactions, mergers or acquisitions that is/are otherwise unlawful under

1 federal or state law, even if such conduct, actions, transactions, mergers or acquisitions  
2 may also violate this Judgment.

3 B. This Judgment shall neither be construed nor interpreted as a concession that Defendants  
4 have, or any of them has, violated any federal or state law, nor that Defendants have  
5 adopted or agreed to any allegations in Plaintiff's Complaint, except for the allegations  
6 relating to jurisdiction.

7 C. This Judgment shall terminate ten (10) years from the date of entry; provided, however,  
8 that this Judgment may remain in effect after completion of such ten (10) year period  
9 solely for the purpose of determining or enforcing compliance during its ten-year effective  
10 period.


11 D. This Court retains jurisdiction to enable any Party to this Judgment to apply to this Court  
12 at any time for further orders and directions as may be necessary or appropriate to carry  
13 out or construe this Judgment, to modify any of its provisions, to enforce compliance, and  
14 to punish violations of its provisions.

15 E. If any part of this Judgment is hereafter adjudged by this Court to be unenforceable, the  
16 remaining provisions of this Judgment shall stay in full force and effect.

17 Based upon the record before this court, the stipulation of the parties [#5] and good  
18 cause appearing, the court finds that entry of this Judgment is fair, equitable and in the  
19 public interest.

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment is  
21 entered accordingly, and the Clerk of Court is instructed to close this case.

22 Dated: February 4, 2015.

23   
24 UNITED STATES DISTRICT JUDGE  
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